



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-92-5

FACTS:

You are a member of the General Court and have sought advice concerning the use of the Great Seal of the Commonwealth (Seal).^{1/}

QUESTION:

Under what circumstances may public officials who are seeking reelection or other office^{2/} display the Seal on private stationery for fundraising or other campaign purposes?

ANSWER:

The Seal may not be displayed by public officials seeking reelection or higher office on private stationery for fundraising or other campaign purposes.

DISCUSSION:

As a member of the General Court, you are a “state employee” as that term is used in the conflict of interest law.^{3/} *EC-COI-91-14*.

Section 23 of G.L. c. 268A, the conflict of interest law, contains general standards of conduct that apply to all public employees. It provides, in pertinent part, that no state employee may use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value which are not available to others similarly situated. §23(b)(2).

In previous opinions concerning the above prohibition, the Commission has emphasized as its main concern whether the activity or conduct benefits a private or personal, as distinct from a public, interest. *See EC-COI-84-127* (member of the judiciary may not lend the prestige of his judicial office to a corporate advertising campaign). The Commission has previously determined that a public employee’s use of his official position to promote political or campaign related matters is unwarranted where such political activity falls outside the scope of his official duties. *See EC-COI-85-29* (use of a student intern by a member of the General Court to perform tasks which would for the most part benefit his re-election efforts and his political campaign was outside the scope of his office and was therefore unwarranted); *90-9* (appointed state official may not use official position to sign a letter of endorsement for a political candidate using his official title or official stationery). Moreover, a solicitation by a public employee for a private purpose would violate G.L. c. 268A if such solicitation could reasonably be perceived as an endorsement by a public agency of the solicitation or gives the appearance that the solicitation is officially sponsored. *See Public Enforcement Letter 89-4* (state employee’s use of official stationery and state resources in an attempt to promote a private trip from which the employee would benefit was an unwarranted use of official position in addition to presenting an unwarranted appearance of state sponsorship or endorsement); *In re Buckley*, 1983 SEC 157 (municipal housing agency employee who was also a private landlord violated §23(b)(2) by using official agency stationery to communicate with her private tenants).

In contrast, the Commission has held that where solicitations are authorized by statute or regulation, or where they are within the scope of official duties, a public employee would not violate §23 by using his official title or public agency letterhead. *See EC-COI-84-128* (state official, pursuant to statutory authorization, may solicit contributions for state program); *83-102* (member of the General Court may sign gift solicitation letter for voter registration drive raffle where endorsement is within the range of activities customarily expected of legislators).

With regard to the question presented, we find that the use by a public official of the Seal for political fundraising or other campaign purposes exceeds the proper use of a public employee's office.^{4/} Such campaign activity benefits a personal rather than a public interest. The recipients of such solicitation could reasonably infer that the solicitation was supported or endorsed by the Commonwealth, when in fact it is intended to benefit a personal purpose (an individual's political campaign).^{5/} Because displaying the state seal may foster a sense of credibility or obligation which the solicitation might not otherwise have had, the use of the state Seal is an unwarranted privilege in violation of §23.^{6/}

This opinion is consistent with other pertinent statutory and regulatory provisions in that it restricts the use of the Seal of the Commonwealth to official communications of the Commonwealth or its subdivisions, or such other uses as are authorized by the Secretary of State. Pursuant to G.L. c. 2, §5, the state secretary is charged with issuing regulations regarding the proper use and display of the state Seal. In addition to providing specifications to which any replication of the Seal must conform, regulations promulgated by the Secretary of State permit, in pertinent part, the use of the Seal to authenticate official documents. The Seal may also be displayed on any building, monument, equipment or structure of any governmental entity, and may be displayed during an event sponsored by a governmental entity. 950 CMR 34.11(1)(c). The regulations prohibit the use of the Seal for commercial or advertising purposes. Moreover, under G.L. c. 264, §5, it is a criminal offense to use the Seal of the Commonwealth for any advertising or commercial purpose. The foregoing statutory and regulatory provisions evidence an intent to limit use of the Seal to identification and authentication of state property, official state documents or state sponsored events. This opinion under G.L. c. 268A furthers that legislative intent.

Date Authorized: March 12, 1992

^{1/}This opinion also applies to use of the "coat of arms" of the Commonwealth as described in 950 CMR 34.01(1)(a) promulgated by the Secretary of State.

^{2/}With regard to a private citizen seeking public office, the activities of such an individual are not within the jurisdiction of the Ethics Commission. However, we would caution such an individual that use of the Great Seal is subject to G.L. c. 264, §5 as well as regulations promulgated by the Secretary of the Commonwealth.

^{3/}"State employee," a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. No construction contractor nor any of their personnel shall be deemed to be a state employee or special state employee under the provisions of paragraph (o) or this paragraph as a result of participation in the engineering and environmental analysis for major construction projects either as a consultant or part of a consultant group for the commonwealth. Such contractor or personnel may be awarded construction contracts by the commonwealth and may continue with outstanding construction contracts with the commonwealth during the period of such participation; provided, that no such contractor or personnel shall directly or indirectly bid on or be awarded a contract for any construction project if they have participated in the engineering or environmental analysis thereof. G.L. c. 268A, §1(q).

^{4/}In deciding when the Seal is being used for campaign (rather than official) purposes, the Commission will look by analogy to decisions by the state Office of Campaign and Political Finance (OCPF) interpreting G.L. c. 55. In particular, OCPF interprets *Anderson v. City of Boston*, 376 Mass. 178 (1978), *appeal dismissed*, 439 U.S. 1069 (1979), to prohibit the use of public resources for purposes of influencing the nomination or election of a candidate or in connection with promoting or opposing a ballot question. See *OCPF-IB-91-01*.

^{5/}Campaign use of the Seal thus differs in kind from an elected official's mere campaign statement that he already holds the office, a statement allowed even on the official ballot by the election laws. G.L. c. 53, §§34, 45; c. 54, §41.

^{6/}We note that for purposes of §23(b)(2), the raising of \$50 or more (for example) would constitute substantial value. *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *Commission Advisory No. 8*.